

NEW APPLICATION



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ORIGINAL

BEFORE THE ARIZONA CORPORATIC
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COMMISSIONERS

MIKE GLEASON, Chairman

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2008 MAR 18 P 4: 38

AZ CORP COMMISSION
DOCKET CONTROL

T-02847A-08-0164

T-01051B-08-0164

IN THE MATTER OF THE JOINT
APPLICATION OF ACCIPITER
COMMUNICATIONS, INC. AND
QWEST CORPORATION FOR
ACCIPITER TO EXTEND ITS
CERTIFICATE OF CONVENIENCE
AND NECESSITY AND TO DELETE A
PORTION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
FAVOR OF QWEST AND FOR
QWEST TO EXTEND ITS SERVICE
AREA AND DELETE A PORTION OF
ITS SERVICE AREA IN FAVOR OF
ACCIPITER.

DOCKET NO. T-02847A-08-_____

DOCKET NO. T-01051B-08-_____

JOINT APPLICATION

Arizona Corporation Commission

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MAR 18 2008

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INTRODUCTION

Pursuant to the provisions of A.R.S. §§40-281 *et seq.*, and A.A.C. R14-2-502, Accipiter Communications, Inc., dba Zona Communications ("Zona") and Qwest Corporation ("Qwest") (collectively the "Companies"), jointly petition the Arizona Corporation Commission ("Commission") for an Order that:

1) Authorizes the deletion of a portion of Qwest's Service Area and the extension of Zona's Certificate of Convenience and Necessity ("CC&N") to include such deleted Qwest portion ("Zona Extension Area");

2) Authorizes the deletion of a portion of Zona's CC&N and the transfer of such portion to Qwest to be included in Qwest's Service Area ("Qwest Extension Area");¹

3) Authorizes Zona to charge those rates and charges in the Zona Extension Area that are set forth in the existing Zona tariffs on file with the Commission;

¹ The Zona Extension Area and the Qwest Extension Area are collectively referred to herein as the "Extension Areas."

1 4) Authorizes Qwest to charge those rates and charges in the Qwest Extension
2 Area that are contained in the existing Qwest tariffs on file with the Commission; and

3 5) States that the Commission does not object to the grant of a waiver by the
4 Federal Communications Commission ("FCC") of the Study Area boundary freeze that
5 would allow Zona and Qwest to modify their respective Study Areas consistent with the
6 changes authorized in the Order.

7 This Application is supported by the following:

8 **SECTION I**

9 Pursuant to a CC&N granted by the Commission in Decision No. 59346 (ACC
10 Docket No. U-02847A-95-0026), dated October 11, 1995, Zona provides local exchange
11 carrier and other telecommunications services to approximately 116 customers with
12 approximately 191 access lines in portions of Maricopa and Yavapai Counties, Arizona.

13 Qwest provides local exchange carrier and other telecommunications services in
14 Arizona subject to the jurisdiction of the Commission. These services are provided in
15 accordance with Qwest's rate and tariffs on file with the Commission. Qwest owns,
16 operates, and controls plant and facilities for the provisioning, sale, and transmission of
17 telecommunications services in Arizona pursuant to authority recognized by the
18 Commission. Qwest's Service Area within Arizona includes the areas identified in
19 Qwest's Boundary Maps that are on file with the Commission.

20 **ZONA EXTENSION AREA**

21 **SECTION II**

22 On August 29, 2006, the Commission issued Decision No. 68913² that contained
23 the following finding:

24 A final matter raised in Staff's Engineering Report involves an
25 unserved area adjacent to Accipiter's Lake Pleasant Exchange
26 known as "GW Holdings." Accipiter's finance application
27 included \$2,061,400 for infrastructure designs for this area, which

28 ² Docket No. T-02487A-05-0846, *In the Matter of the Application of Accipiter Communications, Inc. for Approval of a Finance Application to Assume New Debt.*

1 assumes the addition of 1,000 customers by 2009. However, the
2 GW Holdings property is currently within Qwest's service area.
3 Accipiter and Qwest have discussed a possible transfer of the
4 service area to Accipiter, and Staff recommends an explicit
5 ordering paragraph requiring Accipiter to file a CC&N extension
6 application for the GW Holdings property within 24 months of this
7 Decision. Absent such an extension being granted, Staff
8 recommends that Accipiter not be permitted to draw on the loan for
9 the \$2,061,400 that the Company projects is needed for
10 infrastructure to serve the GW Holdings property.³

11 Decision No. 68913 further ordered Zona to:

12 [f]ile a CC&N extension application for the GW Holdings property
13 within 24 months of this Decision as a condition of being permitted
14 to draw on the loan for the \$2,061,400 that the Company projects is
15 needed for infrastructure to serve the GW Holdings property."⁴

16 The GW Holdings property is now known as the Lake Pleasant 5000 property.
17 This application for an extension of Zona's CC&N is intended, in part, to comply with
18 Decision No. 68913.

19 SECTION III

20 As acknowledged in Decision No. 68913, the Lake Pleasant 5000 property is
21 currently within Qwest's Service Area and immediately adjacent to Zona's Lake Pleasant
22 Exchange. Qwest has agreed to transfer the Lake Pleasant 5000 property to Zona.
23 Additionally, Qwest has agreed to transfer to Zona an additional three and one half
24 adjacent sections north of the Lake Pleasant 5000 property to "square off" Zona's CC&N
25 so that these sections may be combined with Zona's adjacent Lake Pleasant Exchange.
26 Qwest does not have facilities to serve the Zona Extension Area whereas Zona can readily
27 extend its existing facilities from its Lake Pleasant Exchange. Moreover, Zona has had
28 preliminary discussions with a developer who intends to develop within the Lake Pleasant
5000 property, and who is interested in receiving service from Zona since it will be more
cost effective for Zona to provide service to the Zona Extension Area given the proximity

³ Decision at page 5, Finding of Fact No. 16.

⁴ Decision at page 7, lines 23-26.

1 to existing Zona facilities within its Lake Pleasant Exchange.

2 SECTION IV

3 A map depicting the requested Zona Extension Area is attached hereto as Exhibit
4 "A" and incorporated herein by this reference. Specifically, Zona seeks to extend its
5 CC&N to include the following areas that will be deleted from Qwest's Service Area:

6 Township 6 North, Range 2 West, G&SRB&M: All of Sections 4, 5, 6, 7, 8, 9, 17,
7 18; and Township 7 North Range 2 West, G&SRB&M: All of Sections 31, 32, 33 and the
8 west half of Section 34.

9 QWEST EXTENSION AREA

10 SECTION V

11 The Qwest Extension Area is east of the White Tank Regional Park and is currently
12 within the CC&N of Zona. Zona and Qwest have agreed that this territory would be
13 transferred from Zona to Qwest subject to Commission approval. Zona has no customers
14 or facilities within this territory. Qwest's Service Area is immediately adjacent to the
15 Qwest Extension Area. Moreover, Qwest already has facilities that traverse this area and
16 is currently serving a customer within Section 29, which is within the Qwest Extension
17 Area.

18 SECTION VI

19 A map depicting the requested Qwest Extension Area is attached hereto as Exhibit
20 "B" and incorporated herein by this reference. Specifically, Qwest seeks to extend its
21 Service Area to include the following areas that will be deleted from Zona's CC&N:

22 Township 3 North, Range 2 West, G&SRB&M: All of Sections 29 and 32, the
23 west half of Section 28 and the southeast quarter of Section 31.

24 SECTION VII

25 Zona and Qwest will provide those local exchange services within the respective
26 Extension Areas that are identified in the Companies' tariffs on file with the Commission
27 that includes all rates, charges, and terms of service.

1 entirely within Maricopa County. Both Companies have the authority to use the public
2 rights-of-way within Maricopa County. No other city, county, or state agency approvals
3 are required.

4 SECTION XII

5 The Companies will provide notice of this Application as the Commission may
6 order.

7 SECTION XIII

8 All correspondence regarding this Application should be directed to the
9 Companies' attorneys as follows:

10 For Zona:

11 Jeffrey W. Crockett, Esq.
12 Bradley S. Carroll, Esq.
13 SNELL & WILMER
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20 And for Qwest:

21 Norman G. Curtright, Esq.
22 20 E. Thomas Road, 16th Floor
23 Phoenix, AZ 85012
24 Phone: (602) 630-2187
25 Fax: (303) 383-8484
26 E-mail: norm.curtright@qwest.com

27 CONCLUSION

28 WHEREFORE, Zona and Qwest respectfully request that the Commission
expeditiously set this Application for hearing and issue its Order that: (i) authorizes the
deletion of the portion of Qwest's Service Area fully described herein and extend Zona's
CC&N to include those deleted portions; (ii) authorizes the deletion of the portion of
Zona's CC&N fully described herein and adding such deleted portion to Qwest' Service
Area; iii) authorizes Zona and Qwest to charge those rates and charges in the respective
Extension Areas that are in the Companies' tariffs on file with the Commission; and (iv)

1 states that the Commission does not object to the grant of a waiver by the FCC of the
2 Study Area boundary freeze that would allow Zona and Qwest to modify their respective
3 Study Areas consistent with the changes authorized in the Order.

4 RESPECTFULLY SUBMITTED this 18th day of March, 2008.

5 SNELL & WILMER L.L.P.

6
7 By 

8 Jeffrey W. Crockett
9 Bradley S. Carroll
10 One Arizona Center
11 400 E. Van Buren
12 Phoenix, AZ 85004-2202
13 Attorneys for Zona Communications

14 QWEST CORPORATION

15
16 By 

17 Norman G. Curtright
18 20 E. Thomas Road, 16th Floor
19 Phoenix, AZ 85012
20 Attorney for Qwest Corporation

21 ORIGINAL and 13 copies filed this
22 18th day of March, 2008, with:

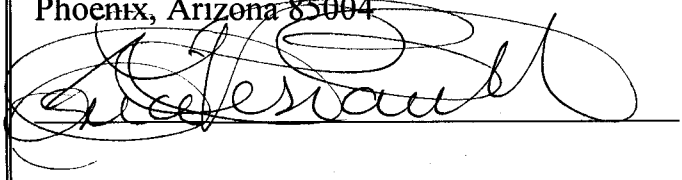
23 Docket Control
24 ARIZONA CORPORATION COMMISSION
25 1200 West Washington Street
26 Phoenix, Arizona 85004

27 COPIES of the foregoing hand-delivered
28 this 18th day of March, 2008, to:

Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85004

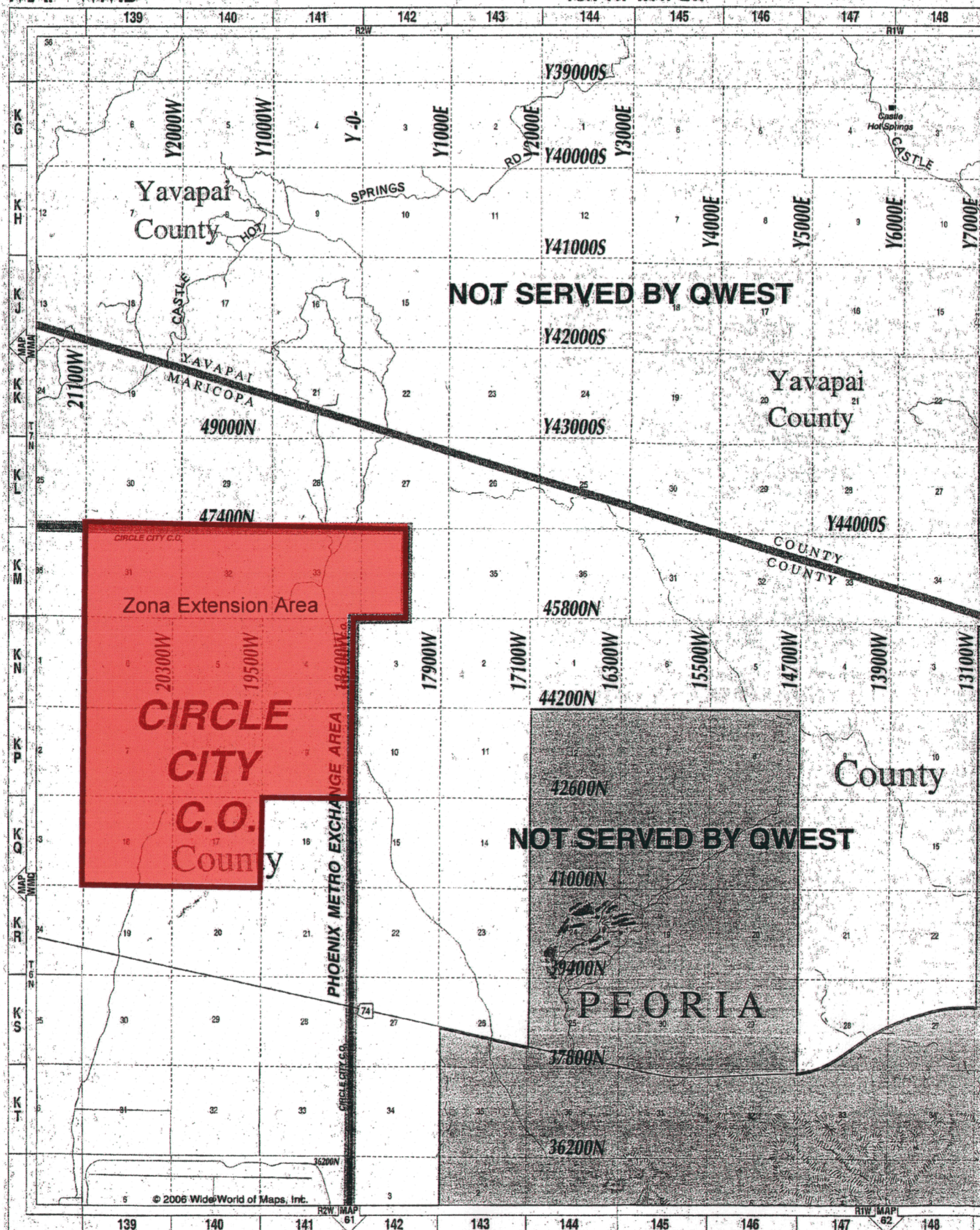
Christopher Kempley, Chief Counsel
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1 Lyn Farmer, Chief Administrative Law Judge
2 ARIZONA CORPORATION COMMISSION
3 1200 West Washington Street
4 Phoenix, Arizona 85004

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MAP WMB

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Qwest Extension Area

